

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

BLACK LOVE RESISTS IN THE RUST, *et al.*,
individually and on behalf of a class of all others
similarly situated,

Plaintiffs,

v.

CITY OF BUFFALO, N.Y., *et al.*,

Defendants.

No. 1:18-cv-00719-CCR

**PLAINTIFFS' NOTICE OF MOTION AND
CONSENT MOTION TO MODIFY SCHEDULING ORDER**

Plaintiffs respectfully move for an extension of ninety days to the scheduling deadlines presently set by the Court's scheduling order. *See* ECF No. 84. In support of this Motion, Plaintiffs state:

1. Under the present schedule, the deadline for completion of fact discovery and any accompanying motions to compel is June 10, 2021. The Court has set additional deadlines for completion of all expert discovery by September 21, 2021, with initial reports to be filed by August 2, 2021, rebuttal reports to be filed by August 30, 2021, and all expert depositions to be completed by September 21, 2021. The deadline for filing dispositive motions is October 27, 2021. *See* ECF Nos. 83-84.

2. On May 11, 2021, the Court held a status conference in this matter. *See* ECF No. 93. At the conference, the Court ordered, among other things, that (i) Defendants produce the metadata spreadsheet for their ESI productions by May 31, 2021; (ii) Defendants complete production of email and non-email ESI for the original 20 custodians and 20 search terms by no

later than May 31, 2021; and (iii) the parties meet and confer concerning Plaintiffs' proposed additional ESI custodians and search terms after May 31, 2021. *See id.*

3. Plaintiffs anticipate that Defendants will require at least several more months to complete their document productions, and that document productions will not be completed before the end of the existing fact discovery deadline on June 10, 2021. For example, Defendants' ESI productions the initial 20 custodians and 20 search terms are not due until May 31—less than two weeks before the end of fact discovery. And the Court ordered the parties to meet and confer concerning additional custodians and search terms after May 31, which would not give Defendants sufficient time to complete ESI productions for any of those custodians and search terms before the fact discovery deadline. In addition, the parties need additional time to resolve other discovery disputes and to schedule and take depositions.

4. Since the Court entered the February 19, 2021 scheduling order, Plaintiffs have continued to diligently pursue fact discovery. For example, Plaintiffs took two depositions (Tracy Masiello and Charles Skipper), but had to adjourn the dates of all further depositions after learning that Defendants had not produced any non-email ESI. In addition, the parties have met and conferred regarding numerous discovery disputes, and narrowed or resolved many of the issues in dispute, including as to Plaintiffs Fourth Requests for Production, *see, e.g.*, ECF Nos. 85-86.

5. As set forth in Plaintiffs' recent Status Report (ECF No. '91, at 1)

As of now . . . we do not even have a date on which depositions can resume, and that in turn means that we cannot begin to evaluate what additional extension of the Scheduling Order in this action will be required.

That remains true. Nevertheless, it is clear that June 10 does not work, and one can hope that, during the course of the extension requested below, it will be possible to determine what more needs to be done and set a firmer, closer-to-final schedule.

6. Accordingly, Plaintiffs respectfully request the following modifications of the schedule:

Deadlines	Current Date	Modified Date
Deadline for completion of fact discovery	June 10, 2021	September 8, 2021
Deadline for motions to compel discovery	June 10, 2021	September 8, 2021
Deadline for service of Initial Expert Reports	August 2, 2021	November 1, 2021
Deadline for service of Rebuttal Expert Reports	August 30, 2021	November 29, 2021
Deadline for completion of all expert discovery (incl. expert depositions)	September 21, 2021	December 20, 2021
Deadline for Dispositive Motions	October 27, 2021	January 25, 2022

7. Plaintiffs have conferred with counsel for Defendants regarding this extension request, and Defendants have stated that they consent to this request.

8. For the reasons set forth above, good cause exists to justify this request to extend the discovery and dispositive motion deadlines by three months.

WHEREFORE, Plaintiffs respectfully request that the Court modify the schedule as proposed.

Dated: May 21, 2021

Respectfully Submitted,

/s/ Keisha A. Williams
Joseph Keleman
Keisha Williams
WESTERN NEW YORK LAW CENTER
Cathedral Park Tower
37 Franklin Street, Suite 210
Buffalo, NY 14202
Tel: (716) 828-8415
Fax: (716) 270-4005
jkeleman@wnylc.com
kwilliams@wnylc.com

/s/ Darius Charney
Darius Charney
Chinyere Ezie
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, NY 10012
212-614-6475
DCharney@ccrjustice.org
CEzie@ccrjustice.org

/s/ Claudia Wilner
Claudia Wilner
Edward Krugman
Anjana Malhotra
NATIONAL CENTER FOR LAW
AND ECONOMIC JUSTICE
275 Seventh Avenue, Suite 1506
New York, NY 10001
212-633-6967
wilner@nclej.org
krugman@nclej.org
malhotra@nclej.org

/s/ Jordan Joachim
Jordan Joachim (admitted *pro hac vice*)
COVINGTON & BURLING LLP
620 Eighth Avenue
New York, NY 10018
212-841-1000
jjoachim@cov.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2021, the foregoing document was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Western District's Local Rules, and/or the Western District's Case Filing Rules & Instructions upon all counsel registered through the ECF System.

/s/ Jordan S. Joachim